



Republic of the Philippines
Senate, Pasay City

Senator Miriam Defensor Santiago

Chair, Committee on Foreign Relations; Committee on Energy, Joint Congressional Power Commission, and Legislative Oversight on Visiting Forces Agreement
Vice-Chair, Committee on Finance; Member, Commission on Appointments

RUSH

23 April 2008

Speaker Prospero Nograles
Fax 931-6437

Dear Speaker Nograles:

This is to respectfully appeal for priority in the House calendar for the enclosed draft Joint Resolution Creating a Congressional Commission on National Territory that I filed in the Senate. My son, party-list Rep. Narciso D. Santiago III, has recently filed a counterpart resolution in the House.

Pursuant to President Arroyo's directive, as chair of the Senate committee on foreign relations, I am going to shelve the two bills on archipelagic baselines, consisting of Senate Bill No. 1467 and House Bill No. 1202. Instead, this week I shall hold a public hearing on my resolution, and sponsor it immediately on the Senate floor.

I believe that the two bills are sincere and honest, but they approach the national territorial problems piecemeal. These bills should be accorded the benefit of a comprehensive and strategic examination of the UN Convention on the Law of the Sea (UNCLOS) as to its full impact on our territorial situation which suffers from internal contradictions between UNCLOS and the Treaty of Paris.

Although the Philippines is a geographical archipelago, it is not necessarily an archipelagic state under the UNCLOS. We have to be wary of declaring the Philippines as an archipelagic state, because then we would adopt certain features which would violate the Philippine constitutional provision on the national territory.

The Treaty of Paris is the basis for the Philippine baseline law, aka R.A. No. 3046, and R.A. No. 5446. Our baseline law accordingly provides:

- All the waters within the limits set forth in the Treaty of Paris, Art. 3 are part of Philippine territory.

- All the waters around, between, and connecting the various islands of the Philippine archipelago are part of Philippine internal waters.

- All the waters beyond the outermost islands of the archipelago, but within the limits of the boundaries set forth in Art. 3 of the treaty, comprise the territorial sea of the Philippines.

By contrast, if we adopt the proposed bills and declare that the Philippines is an archipelagic state, immediately, we would be adopting the following adverse features of an archipelagic state under UNCLOS:

- **Archipelagic baselines.** The UNCLOS, Article 47, is merely permissive, not mandatory, by providing: "An archipelagic State may draw straight archipelagic baselines."

- **Archipelagic waters.** Under the UNCLOS, Article 52, para. 1, "ships of all States enjoy the right of innocent passage through the archipelagic waters." Thus, foreign ships would be able to pass through what are now our internal waters. In effect, the Philippines would no longer have internal waters, except little pockets in bays or lakes. I have to emphasize that the right of innocent passage is enjoyed by warships, submarines, nuclear-powered ships, and ships "carrying nuclear or other inherently dangerous or obnoxious substances."

In addition, if we declare archipelagic waters, the Philippines would assume the duty to "recognize traditional fishing rights and other legitimate activities of immediate neighboring States." Further, the Philippines must respect existing submarine cables laid by other states and passing through our internal waters.

- **Archipelagic sea lane passage.** If we accept the regime of archipelagic sea lanes (we expect at least four such lanes), ships of all states would have a right of passage and their aircraft would have the right of overflight. And the Philippines as the coastal state loses its enforcement jurisdiction in respect of pollution over foreign vessels.

In short, the main problem with the baseline bills filed in our two chambers consists of the following:

1. It gives the right of innocent passage in our internal waters, which would be transformed into archipelagic waters;

2. It gives the right of ship passage and aircraft overflight over archipelagic sea lanes, forming in effect an international maritime highway across the Philippine archipelago;

3. As an archipelagic state, we would be entitled only to 12 miles of territorial sea drawn from our archipelagic baselines. This would be far smaller than the territorial sea under the Treaty of Paris, Article 3, which are called "International Treaty Limits." In other words, the two bills will eliminate the maritime boundaries of the Philippines as established by the 1935 Constitution, based on the Treaty of Paris.

4. It would violate the 2002 Asean-China Declaration on the Conduct of Parties in the South China Sea, which in effect requires the claimants to maintain the status quo. If the archipelagic baselines are drawn to encompass the entire Kalayaan Island Group, in effect we would be extending the International Treaty Limits. This would be a revision of the Treaty of Paris, Article 3, and would have no legal basis under international law. The pending archipelagic bills would claim territorial sovereignty by the simple means of drawing baselines, which is not supported by any norm or practice in international law.

For all these considerations, I appeal under your leadership for an integrated, comprehensive, strategic, and definitive resolution to the present agenda of territorial problems, by ensuring early passage of the enclosed joint congressional resolution, and establishment of the proposed Congressional Commission on National Territory as soon as possible.

Sincerely yours,


MIRIAM DEFENSOR SANTIAGO

Encl.:

Draft Joint Resolution Creating a
Congressional Commission on
National Territory

Copy to:

1. Sec. Alberto Romulo
DFA
2. H.E. Song Tao
Embassy of the People's Republic of China
3. Senate Media